DISSENTING VIEWS TO H.R. 760
THE "PARTIAL BIRTH ABORTION BAN ACT OF 2003"

H.R. 760, the "Partial-Birth Abortion Ban Act of 2003," was introduced in response to the Supreme Court's ruling in *Stenberg v. Carhart*,[1] in which the Supreme Court held unconstitutional a Nebraska statute banning so-called "partial-birth" abortions. We oppose H.R. 760 because it flies in the face of *Stenberg* with the same unconstitutional flaws for which the Court invalidated the Nebraska statute; because the bill is dangerous to women; and because private medical decisions should be made by women and their families, in consultation with their doctors – not politicians.

Sixteen of the nineteen pages of H.R. 760 contain "findings"on matters the Court reviewed in *Stenberg*.[2] In its three pages of operative legislative language, the bill makes it illegal for a physician knowingly to perform a so-called "partial-birth" abortion unless it is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.[3] A physician who violates the law is subject to a fine and up to two years imprisonment.[4]

Rather than complying with the constitutional requirements in *Stenberg*, the drafters of

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[1] 530 U.S. 914 (2000).

[2] The "findings" in the bill include misstatements of both the facts and the law, including, among others: the partial birth abortion procedure is "never medically necessary," Sec. 2, ¶ 1; the procedure is "outside of the standard of medical care," Sec. 2, ¶ 5; the Supreme Court was "required to accept the very questionable findings issued by the district court," Sec. 2, ¶ 7; "Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure," Sec. 2, ¶ 14(A); and "There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures," Sec. 2, ¶ 14(B).

[3]The term "partial-birth abortion" is not a medical term. The bill defines it as,

> "an abortion in which –
> (A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of a breech presentation, any part of the fetal trunk past the naval is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and
> (B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus."

H.R. 760, Sec. 3, ¶ (b).

[4]H.R. 760, Sec. 3, ¶ (a).

H.R. 760 have created a propaganda piece intended to demonize abortion and abortion providers. As a result, the bill is an unconstitutional attempt to regulate abortion, and is detrimental to women's health.

H.R. 760 Is Unconstitutional for the Same Reasons the Supreme Court Struck Down a Similar "Partial-Birth" Abortion Ban in *Stenberg v. Carhart*

The caselaw on abortion is clear. In *Planned Parenthood v. Casey*,[5] the Court articulated the three principles that govern abortion jurisprudence: (1) a woman has the right to choose to terminate her pregnancy prior to "viability;"[6] (2) a law designed to further the State's interest in fetal life, but which imposes an "undue burden" on the woman's decision before fetal viability is unconstitutional;[7] and (3) after viability, a State may regulate or proscribe abortion except "where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."[8]

In 2000, the Supreme Court applied these principles to a Nebraska ban on partial-birth abortions, and found the statute unconstitutional on two grounds: it did not include an exception to protect the health of the woman, and it posed an undue burden on the right to obtain an abortion.[9] Because H.R. 760 suffers from these same defects, it is likewise unconstitutional.

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[5] 505 U.S. 833 (1992).

[6] *Stenberg v. Carhart* 530 U.S. at 921. "Viability" of the fetus differs from woman to woman. A woman's doctor determines the point of viability, but it typically occurs between 24 to 28 weeks after gestation.

[7] *Id.* An "'undue burden is ... shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.'" *Id.* (quoting *Casey*, 505 U.S. at 877).

[8] *Id.* (quoting *Casey*, 505 U.S. at 879). Indeed, the conservative jurist, Richard Posner, has suggested that partial-birth abortion bans such as H.R. 760 do not even meet the extremely deferential standard of having a "rational relation to a legitimate state interest" because they do not preserve fetal life, but rather, simply shift the method of abortion to a more dangerous procedure. *Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 470-71 (7th Cir. 1998) ("The singling out of the D & X procedure for anathematization seems arbitrary to the point of irrationality. Annexing the penalty of life imprisonment to a medical procedure that may be the safest alternative for women who have chosen abortion because of the risk that childbirth would pose to their health adds a note of the macabre to the Wisconsin statute, especially when we consider that physicians can insulate themselves from all legal risk by killing the fetus *in utero*." *Id.* at 471.) *See also Stenberg*, 530 U.S. at 946, 951 (Stevens, J. and Ginsberg, J., concurring).

[9] *Stenberg*, 530 U.S. at 930.

H.R. 760 Unconstitutionally Omits an Exception to Protect Maternal Health

Both pre- and post-viability restrictions on abortion must contain an exception "where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."[10] Furthermore, such an exception must not only protect women from health risks created by the pregnancy, itself, but also from health risks caused by a regulation that forces women to choose a less medically appropriate abortion procedure.[11]

Even the Ashcroft Department of Justice recognizes that, in order for any abortion regulation to be constitutional, it must contain an exception to protect the woman's life *and health*. The Department of Justice has stated, "After fetal viability, States may ban abortion altogether, *so long as they allow abortions necessary to safeguard the woman's life or health*."[12]

There is no question that H.R. 760 does not contain an exception to protect maternal health. For this reason, alone, the bill is unconstitutional.[13]

The Supreme Court Will Not Defer to Erroneous Factual and Legal Conclusions Masked as Congressional "Findings"

The drafters of H.R. 760 attempt to justify the lack of a health exception in the bill's "findings," which summarily assert that the banned procedure is "never medically necessary to preserve the health of a woman."[14] They argue that, because the *Stenberg* decision was based on

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[10]*Stenberg*, 530 U.S. at 930 (quoting *Roe*, at 164-64 (emphasis omitted)) ("Since the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to previability regulation.").

[11]*Id.* at 934-38 (comparing the relative safety of different abortion procedures and concluding that "a statute that altogether forbids D & X creates a significant health risk").

[12]Brief for the United States of America as *Amicus Curiae* Supporting Reversal at 7, *Women's Medical Professional Corp. v. Taft*, (6th Cir.) (No. 01-4124) (emphasis added).

[13]Representatives Scott, Baldwin, and Jackson-Lee offered an amendment that would have added a health exception, in conformance with *Stenberg*, which was defeated in a party-line vote.

[14]H.R. 760, Sec. 2, ¶ 14(E). We wonder: if the procedure is *never necessary* to protect the woman's health, why the proponents of the bill admit that the procedure may be necessary to protect a mother "whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself." Sec. 3, ¶ (d)(1). Are not these situations in which the mother's health is also at risk?

"very questionable findings,"[15] Congress is better equipped to assess the evidence after holding "extensive" hearings on the subject.[16] Claiming that congressional findings demonstrate that a health exception is unnecessary, they argue that the Supreme Court is bound to accord "great deference" to these findings.

The mere statement of "findings" does nothing to rehabilitate the bill's unconstitutionality. There have been several instances in the past in which congressional attempts to overturn Supreme Court precedents have failed. For example, Congress passed the Religious Freedom Restoration Act ("RFRA") in response to an earlier Supreme Court decision.[17] As in this case, Congress held separate hearings to assess the issues and made independent findings, prior to enacting the law. In striking down RFRA, the Supreme Court held that Congress "has been given the power 'to enforce,' not the power to determine what constitutes a constitutional violation."[18] The Court further held that "[t]he power to interpret the Constitution in a case or controversy remains in the Judiciary"[19] and "RFRA contradicts vital principles necessary to maintain

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[15] H.R. 760 Sec. 2, ¶ 7. Far from being "questionable," the trial court's findings in *Stenberg* were based on consideration of evidence from experts on both sides of the issue, including evidence from *the congressional hearings* themselves. *Stenberg*, 530 U.S. at 929, 935. Nor was there a "dearth of evidence" in the trial court supporting the findings. *See Stenberg v. Carhart,* 11 F. Supp. 2d 1099, 1110-18 (D. Neb. 1998). Additionally, in reviewing the evidence, the Supreme Court acknowledged many of the points raised by the sponsors, such as the "division of medical opinion," the risks of different abortion procedures, and the lack of medical studies establishing the safety of "partial-birth abortion/D&X." *Stenberg,* 530 U.S. at 926, 937. After reviewing all this evidence the Court found: "Where a significant body of medical opinion believes a procedure may bring with it greater safety for some patients and explains the medical reasons supporting that view, we cannot say that the presence of a different view by itself proves the contrary. Rather, the uncertainty means a significant likelihood that those who believe that D&X is a safer abortion method in certain circumstances may turn out to be right." 530 U.S. at 937.

[16] *Id.* at Sec. 2, ¶ ¶ 9, 10, 11, 12, citing *Katzenbach v. Morgan*, 384 U.S. 641 (1966), *Turner Broadcasting System Inc. v. F.C.C.,* 512 U.S. 622 (1994) ("*Turner I*"), *Turner Broadcasting System Inc. v. F.C.C.,* 520 U.S. 180 (1997) *("Turner II*"), and *City of Rome, Georgia v. United States,* 472 F. Supp. 221 (D. Colo. 1979), *aff'd,* 446 U.S. 156 (1980).

[17] *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990) (holding that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling state interest).

[18] *City of Boerne v. Flores,* 521 U.S. 507, 519 (1997).

[19] *Id.* at 524.

separation of powers and the federal balance."[20]

With H.R. 760, the sponsors are attempting to overturn Supreme Court constitutional precedent by enacting a law that fails to adhere to the precedent. This attempt will fail and the bill will be declared unconstitutional.

The Bill Threatens the Separation of Powers

The bill also presents a threat to our constitutional system of government and separation of powers. Where constitutional rights are at stake, the Judiciary conducts its own independent review of the facts.[21] Even where constitutional rights are *not* at stake, the Court has recently viewed with skepticism Congressional findings purportedly supporting its exercise of powers under Article I or Section 5 of the Fourteenth Amendment.[22]

Here, the sponsors assert that factual findings made by the Judiciary can be, in essence, set aside by contrary Congressional findings. Under this novel regime, Congress could have overturned *Brown v. Board of Education* by "finding" that racially separate schools were, in fact "equal," or could, in line with this bill's approach, ban *all* abortions by "finding" that all procedures were unsafe. Ultimately, Congressional findings that seek to defy the Supreme Court and the function of the federal courts as triers of facts will not only threaten the independence of the Judiciary, but undermine the value of Congressional findings in other contexts where such findings may, unlike in this bill, actually be a legitimate and appropriate exercise of Congressional power.

H.R. 760 Is Overbroad and Places an Undue Burden on a Woman's Right to Obtain an Abortion

Like the law struck down by the *Stenberg* court, H.R. 760 is also overbroad and places an undue burden on a woman's constitutional right to choose to have an abortion. The Supreme Court has made clear that the State has a different interest in regulating abortion prior to- and post-viability. Before viability, the woman has a right to choose to terminate her pregnancy, and a

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[20] *Id.* at 536. Similarly, Congress attempted to overturn the Supreme Court's *Miranda* requirements by enacting a new "voluntariness" standard in their place. In *Dickerson v. United States*, 530 U.S. 428, 435-36 (2000), the Supreme Court reviewed the law, and in striking it down held that "*Miranda*, being a constitutional decision of this Court, may not be in effect overruled by an Act of Congress," *id.* at 432, and "Congress may not legislatively supersede our decisions interpreting and applying the Constitution." *Id.* at 437.

[21] *See, e.g., Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843-44 (1978).

[22] *See, e.g., United States v. Morrison*, 529 U.S. 598, 614 (2000).

law must not impose an "undue burden" on this decision.[23]

H.R. 760 is not limited to post-viability abortions.[24] Nor is it limited to one clearly-defined "late-term" abortion procedure. To the contrary, the bill's definition of "partial-birth abortion" is, vague,[25] overbroad, and covers the most common type of 2nd-trimester abortion procedure.[26] In fact, the term "partial-birth abortion" is not a medical term, but a political one intended to inflame public opinion and shift the focus from the fact that private medical decisions should be made by women and their families, in consultation with their doctors – not politicians.

As Simon Heller testified before the Subcommittee on the Constitution,

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[23]*Stenberg*, 530 U.S. at 921 (citing *Casey*, 505 U.S. at 870, 877).

[24]During the debate of an identical bill in the 107th Congress, the bill's sponsor, Rep. Chabot, admitted this at the Judiciary Committee markup when he spoke regarding an amendment offered by Rep. Scott, which would have banned abortions on viable fetuses, with certain exceptions. Representative Chabot stated,

> [The amendment] offers protection only to viable infants, and the majority of partial-birth abortions are performed on babies during their fifth and sixth months of pregnancy. Most of the infants aborted during this period, obviously, are not viable. The substitute would thus have no impact on the vast majority of partial-birth abortions, and that's the whole purpose of this legislation.

Statement of Rep. Chabot, Markup of H.R. 760, "The Partial-Birth Abortion Ban Act of 2002," Committee on the Judiciary, 107th Cong., July 17, 2002, at 148-149.

[25]Indeed, H.R. 760 does not even consistently describe the same technique within the findings. *Compare* H.R. 760, Sec. 2, ¶ 1 (partial-birth abortion involves delivery until "only the head remains inside the womb"); Sec. 2, ¶ 14(A) (partial-birth abortion involves conversion to a footling breech presentation); Sec. 2, ¶ 14(J) (partial-birth abortion involves delivery of "all but the head, out of the womb").

[26]Approximately 10% of all abortions are performed during the second trimester of pregnancy (12 to 24 weeks). The most commonly used procedure during this period is called "dilation and evacuation" or "D & E". That procedure accounts for about 95% of all abortions performed from 12 to 20 weeks of gestational age. *Stenberg*, 530 U.S. at 924. The drafters of the bill could have chosen to use more specific language and exclude the D & E method of abortion, but chose not to. *See id.* at 950 (O'Connor, J., concurring) (recognizing that "unlike Nebraska, some other States have enacted statutes more narrowly tailored to proscribing the D & X ["dilation and extraction"] procedure alone. Some of those statutes have done so by specifically excluding from their coverage the most common methods of abortion, such as the D & E and vacuum aspiration procedures," and citing the Kansas, Utah, and Montana statutes approvingly).

> [J]ust like the language of Nebraska's statute, [H.R. 760] could still prohibit many pre-viability abortions using the D&E [dilation and evacuation] method, of which the specific technique described the first paragraph of the bill's findings is simply one type. In fact, the prohibitory language of the bill is quite plainly broader than the abortion technique described in paragraph one of the bill's "findings." *Compare* H.R. 760 § 2, ¶ 1 (describing breech presentation technique) *with* § 3, ch. 74 § 1531(b)(1)(A) (prohibiting both breech *and* cephalic presentation techniques). The bill perpetuates the problem of Nebraska's law: it uses language which sweeps more broadly than the single technique described in the "findings" by the sponsors.[27]

Because the bill is not limited to a single, late-term abortion procedure but, instead, also prohibits the most common 2nd-trimester abortion method, the bill imposes an undue burden on a woman's right to obtain an abortion and is unconstitutional for this reason, as well.

H.R. 760 Endangers Women's Health by Banning Safe Abortion Procedures

Even if H.R. 760 covered only a single, late-term abortion procedure (known medically as "intact D & E," "dilation and extraction," or "D & X") – which it does not – the bill would still endanger women's health. A threat to women's health always results when a safe medical procedure is removed from the physician's array of options, as there will always be some woman for whom the banned procedure would be the safest.

Contrary to the contentions in the findings of H.R. 760, the conclusion that D & X is a safe procedure is not the view of a single trial judge to whose factual findings the Supreme Court deferred. Rather, after hearing extensive expert medical testimony, every court in the country to reach the question but one has agreed that D & X is a safe procedure that may well be the safest for some women in certain circumstances.[28]

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[27]Testimony of Simon Heller, Esq. *before the* Committee on the Judiciary, Subcommittee on the Constitution, Hearing on H.R. 760, March 25, 2003.

[28]*See, e.g., Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 467-468 (7th Cir. 1998) ("The D & X procedure is a variant of D & E designed to avoid both labor and the occasional failures of induction as a method of aborting the fetus, while also avoiding the potential complications of a D & E. For some women, it may be the safest procedure. So at least the plaintiff physicians believe, and these beliefs are detailed in affidavits submitted in the district court. *This is also the opinion of the most reputable medical authorities in the United States to have addressed the issue: the American Medical Association and the American College of Obstetricians and Gynecologists.*" (emphasis added)); *Women's Med. Prof'l Corp. v. Taft*, 162 F. Supp. 2d 929, 942 (S.D. Ohio 2001) ("The safety advantages of the D & X over other methods of abortion are both intuitive and well supported by the record."); *Rhode Island Med. Soc'y v. Whitehouse*, 66 F. Supp. 2d 288, 314 (D.R.I. 1999), *aff'd*, 239 F.3d 104 (1st Cir. 2001) ("Defendants claim that a D & X could never be necessary to save a woman's health, but the evidence at trial failed to support that contention. . . . Therefore, this Court finds that the D & X

These rulings were based on a wealth of credible medical evidence. Indeed, the American College of Obstetricians and Gynecologists ("ACOG"), the leading professional association of physicians who specialize in the health care of women, has concluded that D & X is a safe procedure and may be the safest option for some women. ACOG has explained that "[i]ntact D & E, including D & X, is a minor -- and often safer -- variant of the 'traditional' non-intact D & E."[29] ACOG has also stated that D & X "may be the best or most appropriate procedure in a particular

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could be used to preserve a woman's health and must be available to physicians and women who want to rely upon it."); *Richmond Medical Center for Women v. Gilmore*, 55 F. Supp. 2d 441, 491 (E.D. Va. 1999) ("When the relative safety of the D&E is compared to the D&X, there is evidence that the D&X (which is but a type of D&E . . .) has many advantages from a safety perspective. . . . For some women, then, the D&X may be the safest procedure."(citations to the trial record omitted)); *Planned Parenthood of Central New Jersey v. Verneiro*, 41 F. Supp. 2d 478, 484-85 (D.N.J. 1998) ("The intact dilatation and extraction, or intact D&X, has not been the subject of clinical trials or peer-reviewed studies and, as a result, there are no valid statistics on its safety. As its 'elements are part of established obstetric techniques,' the procedure may be presumed to pose similar risks of cervical laceration and uterine perforation. However, because the procedure requires less instrumentation, it may pose a lesser risk. Moreover, the intact D&X may be particularly helpful where an intact fetus is desirable for diagnostic purposes." (citation to ACOG Statement on Intact D&X omitted)); *Richmond Med. Ctr. for Women v. Gilmore*, 11 F. Supp. 2d 795, 827 n.40 (E.D. Va. 1998), *aff'd*, 224 F.3d 337 (4th Cir. 2000); *Hope Clinic v. Ryan*, 995 F. Supp. 847, 852 (N.D. Ill. 1998) (Korcoras, J., appointed by President Carter) ("[T]he record here contains significant evidence that the D&X procedure is often far safer than other D&E procedures.");"[D&X] reduces the risk of retained tissue and reduces the risk of uterine perforation and cervical laceration because the procedure requires less instrumentation in the uterus. [It] may also result in less blood take less operating time."); *Planned Parenthood v. Woods*, 982 F. Supp. 1369, 1376 (D. Ariz. 1997) (The D&X method is one of several "safe, medically acceptable abortion methods in the second-trimester."); *Women's Medical Professional Corp. v. Voinovich,* 911 F. Supp. 1051, 1070 (S.D. Ohio 1995) ("[T]his Court finds that use of the D&X procedure in the late second trimester appears to pose less of a risk to maternal health than does the D&E procedure, because it is less invasive -- that is, it does not require sharp instruments to be inserted into the uterus with the same frequency or extent -- and does not pose the same degree of risk of uterine and cervical lacerations . . . [T]he D&X procedure appears to have the potential of being a safer procedure than all other available abortion procedures . . . ").

[29]Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, et al., in Support of Respondent at 6, filed in *Stenberg v. Carhart*, 530 U.S. 914 (2000) (No. 99-830) (*hereinafter* "ACOG Brief").

circumstance to save the life or preserve the health of a woman."[30] "Only the physician, in consultation with the patient and based on her circumstances, can make this decision."[31]

Relying on such medical evidence, the Supreme Court concluded in *Stenberg* that "significant medical authority supports the proposition that in some circumstances, D & X would be the safest procedure."[32] Indeed, the Court concluded that "a statute that altogether forbids D & X creates a significant health risk."[33]

This is why, in addition to ACOG, numerous other medical groups have publicly opposed attempts by Congress to pass abortion ban legislation, including the American Public Health Association, American Nurses Association, American Medical Women's Association, California Medical Association, Physicians for Reproductive Choice and Health, American College of Nurse Practitioners, American Medical Student Association, Association of Reproductive Health Professionals, Association of Schools of Public Health, Association of Women Psychiatrists, National Asian Woman's Health Organization, National Association of Nurse Practitioners in Reproductive Health, National Black Women's Health Project, National Latina Institute for Reproductive Health, and Rhode Island Medical Society. Moreover, contrary to the claims of the sponsors of H.R. 760, the American Medical Association does not support any criminal abortion ban legislation.[34]

H.R. 760 Criminalizes Doctors and Encourages Women To Be Sued by Their Husbands and Parents

H.R. 760 would turn doctors into criminals and put them in jail for performing a safe medical procedure.[35] The civil sanctions and criminal remedies, along with previous references by

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[30]ACOG, Statement of Policy, *Abortion Policy* at 3 (Sept. 2000).

[31]ACOG Brief at 7.

[32]*Stenberg*, 530 U.S. at 932.

[33] *Id.* at 938. In addition, the Supreme Court squarely rejected the very same claims made in H.R. 760's "findings" that D & X is somehow unsafe because it allegedly creates risks of cervical incompetence and lacerations or risks from blind instrumentation and conversion of the fetus to a breech position. *Stenberg*, 530 U.S. at 933-38. Medical evidence fails to support any of these claims.

[34]American Medical Association Statement, Oct. 21, 1999 (because abortion ban bill contained criminal sanctions, "[f]or this reason we do not support the bill").

[35]H.R. 760, Sec. 3, ¶ a. Representative Baldwin offered an amendment to eliminate the criminal penalties, which was defeated in a party-line vote.

legislative proponents to medical professionals as "assassins," "exterminators" and "murderers," have been said to be part of a design to intimidate medical professionals from performing abortions generally. Similarly, put in the context of abortion clinic demonstrations and bombings, it seems that many in the anti-abortion movement have an agenda of banning all abortions.

The provisions in the legislation imposing criminal sanctions – including imprisonment -- appear to be drafted to put physicians in a position where they will be chilled from performing many of the most common abortion procedures. For example, doctors may well choose not to perform any abortion for fear that they will be unable to afford the costs of establishing that the method of abortion chosen wasn't the only one available to save the woman's life. Given the vague and overbroad language of the bill, doctors can reasonably fear prosecution for using the safest and most common second-trimester abortion methods. For this reason, the American Medical Association does not support the bill.[36]

Further, the bill allows a woman to be sued by her husband or parents if she receives a partial-birth abortion.[37] As the Supreme Court has held, a husband cannot have veto power over his wife's decision to have an abortion.[38] Allowing a husband to sue his wife, or threaten to sue his wife, is merely a back-door attempt to avoid yet another Supreme Court holding. In addition, this provision allows an abusive husband or a husband who has abandoned his wife to sue or threaten his wife with a lawsuit if she obtained the procedure to protect her health and future fertility. This is an extremely anti-family provision that encourages litigation over a personal, medical decision.[39]

Conclusion

H.R. 760 is a facially unconstitutional attempt to roll back a woman's right to choose. The bill suffers from the same two flaws that led the Supreme Court to declare a similar Nebraska statute unconstitutional: it fails to include an exception to protect maternal health, and it places an undue burden on a woman's right to obtain an abortion prior to viability by banning the most

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[36]American Medical Association Statement, Oct. 21, 1999.

[37]Although the bill exempts women from criminal prosecution, Sec. 3, ¶ (e), they are not exempt from the bill's imposition of civil liability: "The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion." Sec. 3, ¶ (c)(1).

[38]*Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 70 (1976).

[39]Representative Nadler offered an amendment that would have eliminated the civil cause of action against the woman, but it was defeated in a party-line vote.

common 2nd-trimester abortion procedure. Fifteen pages of "findings" do nothing to remedy this unconstitutionally flawed bill.

Further, even if the bill were limited to one, specific abortion method – which it is not – it would still endanger women's health by prohibiting a procedure that the American College of Obstetricians and Gynecologists and other respected medical groups say may be the best or most appropriate procedure to save the life or preserve the health of a woman. In addition, the bill is part of a political scheme to sensationalize the abortion debate through heated rhetoric and to shift the focus from the fact that women and their doctors – not the government – should decide matters of their own health care. Finally, the bill criminalizes the practice of medicine and subjects women to lawsuits by their husbands and parents. For all of these reasons, we dissent.

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